

On the date of claimant's automobile accident, January 2, 1998, claimant was regularly employed at a convenience store owned by the respondent in Larned, Kansas.

Claimant lived in Hoisington, Kansas, which is located about 30 miles from Larned, Kansas. The respondent owns a number of convenience stores located in western Kansas. Claimant testified her District Manager, Charles Kenyon, contacted her by telephone at the Larned convenience store and asked her to work for a few days at one of respondent's convenience store located in Garden City, Kansas. Mr. Kenyon requested the claimant to work from 6:00 a.m. to 3:00 p.m. on December 31, 1997, and January 1 and 2, 1998. Mr. Kenyon was having employment problems at this convenience store and needed an experienced worker to help in operating the convenience store over this three day period. In addition to claimant's regular hourly pay, Mr. Kenyon offered to pay claimant's expenses for food, gas, and a motel for those days of work.

Claimant had a small baby at home and decided not to stay in Garden City at a motel. Mr. Kenyon filled claimant's car with gas twice and gave her \$50 for other expenses at the completion of her shift on January 2, 1998.

After claimant had completed her work shift on January 2, 1998, she was severely injured in an automobile accident while returning to her home in Hoisington, Kansas. Claimant fell asleep and collided with a semi-trailer truck in an accident that occurred about 30 miles from Garden City on her way home to Hoisington, Kansas.

The Administrative Law Judge granted claimant's request for temporary total disability and medical compensation finding claimant suffered an accidental injury that arose out of and in the course of her employment with the respondent. Respondent argues that claimant's accidental injury did not arise out of and in the course of her employment because such accident occurred after the claimant had left her employment duties and she was on her way home from work. Respondent contends the only exception to what is characterized as the "going and coming" rule is when an employee is injured on the premises of the employer or on the only available route to or from work which is a route involving a special risk or hazard not used by the public except in dealings with the employer. See K.S.A.1997 Supp. 44-508(f). Claimant, however, argues an exception to the "going and coming" rule exists when a claimant is injured while traveling to and from work and the travel is necessary to the employment and furthers the interest of the employer. See Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, Syl. ¶ 2, 680 P.2d 556, rev. denied 235 Kan. 1042 (1984).

The Appeals Board finds the Special Administrative Law Judge's preliminary hearing Order for Compensation should be affirmed. Claimant was assigned on a temporary basis to work at respondent's convenience store in Garden City, Kansas, at the special request of respondent and for the benefit of both respondent and claimant. In addition to claimant's regular hourly pay, respondent paid claimant expenses which included furnishing claimant with gasoline for her automobile to go back and forth to work. Claimant was severely injured in an automobile accident that occurred on her way home from work in Garden City, Kansas. The Appeals Board concludes the travel between Garden City and claimant's home in Hoisington, Kansas, was travel necessary for her to work in Garden

City, Kansas. Therefore, the Appeals Board finds there was a causal relationship between such employment and the accident; thus, the "going and coming" rule as set forth in K.S.A. 1997 Supp. 44-508(f) does not apply. Claimant's accidental injury arose out of and in the course of her employment with the respondent.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order for Compensation entered by Special Administrative Law Judge William F. Morrissey on May 4, 1998, should be, and is hereby, affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June 1998.

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BOARD MEMBER

c: M. John Carpenter, Great Bend, KS  
James M. McVay, Great Bend, KS  
William F. Morrissey, Special Administrative Law Judge  
Philip S. Harness, Director